

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 05-1013V

Filed: 18 September 2008

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BARBARA FERNANDEZ, as the Legal
Representative of her Minor Grandson,
GABRIEL PARKER CALLAWAY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

* * * * *

UNPUBLISHED

Curtis R. Webb, Esq., Webb, Webb, & Guerry, Twin Falls, Idaho for Petitioner.
Glenn A. MacLeod, Esq., U.S. Department of Justice, Washington, D.C., for Respondent.

DECISION ON PROFFER AND ACCEPTANCE

On 20 September 2005, Petitioner brought a petition under the National Childhood Vaccine Injury Act of 1986 (“Vaccine Act” or “Act”).¹ Respondent conceded the case as an acute encephalopathy occurring within 24 hours of administration of the DTaP vaccination to Gabriel on 26 September 2002.

Since that time, the parties have deliberated on the amount of damages apportionable to Gabriel’s injury. On 4 September 2008, Respondent filed a proffer to compensate Petitioner for all injuries compensable by the Vaccine Program. On 11 September 2008, Petitioner filed an Acceptance of the Proffer, accepting the amounts contemplated in the Proffer.

The Proffer contemplates lost future earnings amounting to \$656,707.58, actual and projected pain and suffering damages in the amount of \$200,668.10, past unreimbursable expenses of \$15,000.00 and payment of a Medicaid lien in the amount of \$37,395.52. Respondent’s proffer of future life care items is detailed in **Appendix A: Items of Compensation for Gabriel Parker**

¹ The statutory provisions governing the Vaccine Act are found in 42 U.S.C. §§300aa-10 *et seq.* (West 1991 & Supp. 1997). Hereinafter, reference will be to the relevant subsection of 42 U.S.C.A. §300aa.

Callaway, attached and incorporated hereto. Petitioner accepts those proffered amounts as the total amount attributable to the vaccine-related injury conceded to be entitled to compensation.

Wherefore, by the proffer and acceptance of the parties, and for good cause shown, the Court awards the following compensation to Petitioner for the vaccine-related injury(ies) sustained by Gabriel Parker Callaway:

- A. A lump sum payment of **\$219,261.16**, representing trust seed funds consisting of the present year cost of compensation for residential and supportive employment services expenses in Compensation Year 2020 (\$118,625.00) and life care expenses in the first year after judgment (\$100,636.16), in the form of a check payable to Wells Fargo Bank, N.A., as Trustee of the Reversionary Trust established for the benefit of Gabriel Parker Callaway, as set forth in **Appendix A: Items of Compensation for Gabriel Parker Callaway**, attached and incorporated hereto.
- B. A lump sum payment of **\$857,375.68**, representing compensation for lost future earnings (\$656,707.58) and pain and suffering (\$200,668.10), in the form of a check payable to Wells Fargo, Texas, N.A., as Trustee of the Management Trust for Gabriel Parker Callaway, for the benefit of Gabriel Parker Callaway. No payment shall be made under this paragraph until Petitioner provides Respondent with a copy of the Court order creating the Management Trust for Gabriel Parker Callaway, as well as a copy of the executed trust agreement.
- C. A lump sum payment of **\$15,000.00**, representing compensation for past unreimbursable expenses, in the form of a check payable to Barbara Fernandez, Petitioner.
- D. A lump sum payment of **\$37,395.52**, representing compensation for the reimbursement of the Texas State Medicaid lien, payable jointly to Petitioner, Barbara Fernandez, and "TMHP/Medicaid, Torts Receivables, 12357 B Riata Trace Parkway, Austin, TX 78720 (Attn: Vistella McKee). Petitioner has agreed to endorse this payment over to the State of Texas.
- E. An **amount sufficient** to purchase the annuity contract described in paragraph II. E. of the attached Proffer, paid to the life insurance company from which the annuity will be purchased.

The Court accepts these terms as just and reasonable. In the absence of a motion for review filed pursuant to Vaccine Rules 23 and 24, the Clerk is directed to enter judgment in accord with this

Decision.²

The parties are encouraged at this time to discuss attorney fees and costs incurred by Petitioner, so that Petitioner may expeditiously file an application for compensation of attorney fees and costs in a timely fashion, not later than 180 days after the entry of judgment on this Decision. Any further issues or queries should be directed to my law clerk, Isaiah Kalinowski, Esq., at (202) 357-6351.

IT IS SO ORDERED.

Richard B. Abell
Special Master

² Under Vaccine Rule 11(a), the parties may expedite entry of judgment by filing a joint notice renouncing the right to seek review of this decision by a Court of Federal Claims judge. Then, under Vaccine Rule 12(a), Petitioner may expedite payment by filing an election to accept the judgment.